

Message Text

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FM AMEMBASSY KATHMANDU
TO SECSTATE WASHDC 1511
INFO AMEMBASSY DACCA
AMEMBASSY ISLAMABAD
AMEMBASSY NEW DELHI

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E.O. 11652: GDS
TAGS: ETRD/ NP, IN, BG
SUBJECT: TRADE AND TRANSIT AGREEMENTS

REF: KATHMANDU 1265

1. SUMMARY. EMBASSY HAS NOW HAD OPPORTUNITY TO REVIEW TEXTS OF TRADE AND TRANSIT AGREEMENTS (AND ACCOMPANYING PROTOCOLS AND LETTERS) AND TO DISCUSS THEM IN SOME DETAIL WITH RESPONSIBLE GON OFFICIAL. IN GENERAL, WE BELIEVE OUR EARLIER ASSESSMENT, THAT NEPAL FARED BETTER THAN IT HAD ANTICIPATED, REMAINS VALID. ON OTHER HAND, INDIA IS NOT WITHOUT ITS GAINS AND ITS CONCESSIONS TO NEPAL ARE CLEARLY LIMITED. END SUMMARY.

2. EMBASSY HAS REVIEWED TEXTS OF TRADE AND TRANSIT PACKAGE AS PROVIDED BY INDIAN EMBASSY HERE. PACKAGE CONSISTS OF TWO TREATIES ("TRADE" AND "TRANSIT"), TWO PROTOCOLS (ONE EACH ON TRADE AND TRANSIT), ONE MEMORANDUM (ON TRANSIT), ONE AGREEMENT (ON COOPERATION TO CONTROL UNAUTHORIZED TRADE), AND FOUR LETTERS. WE HAVE ALSO COMPARED THESE TEXTS WITH COPIES WE HAD OBTAINED FROM EMBASSY SOURCE
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PRIOR TO MARCH 17 SIGNING CEREMONY IN NEW DELHI AND HAVE CONFIRMED THAT THERE WERE NO CHANGES MADE BETWEEN INITIALING AND FINAL SIGNATURE. (NOTE: THERE WAS FIFTH LETTER IN PACKAGE OBTAINED FROM EMBASSY SOURCE BUT IT DEALS WITH MINOR ISSUE IN EFFECT ALREADY COVERED BY TRANSIT PROTOCOL.) EMBOFF HAS ALSO HAD OPPORTUNITY TO REVIEW NUMBER OF ISSUES ARISING FROM THESE TEXTS WITH DIRECTOR GENERAL OF CUSTOMS

PANDEY, WHO PARTICIPATED IN NEGOTIATIONS AND IN SIGNING CEREMONY IN NEW DELHI. FOLLOWING IS OUR ANALYSIS OF HIGHLIGHTS OF TRADE AND TRANSIT PACKAGE BASED ON THIS REVIEW DISCUSSION.

3. TRADE TREATY AND PROTOCOL: PROVISIONS OF TRADE TREATY ARE ALMOST IDENTICAL WITH TRADE PORTION (FIRST SEVEN ARTICLES) OF 1971 TREATY. ONLY MAJOR CHANGE--AND THIS APPEARS MORE COSMETIC THAN REAL--IS TO MAKE PROVISIONS OF PREFERENTIAL TREATMENT FOR TRADE IN AGREED PRIMARY PRODUCTS TWO WAY RATHER THAN JUST NEPAL TO INDIA. PROTOCOL, HOWEVER, DOES CONTAIN SIGNIFICANT CHANGES, APPARENTLY LARGELY IN NEPAL'S FAVOR, AS PER REFTEL. MOST IMPORTANT IS DEFINITION OF NEPALESE INDUSTRIAL GOODS WHICH WILL BE GIVEN DUTY FREE TREATMENT. AS REPORTED REFTEL, FOREIGN COMPONENT (I.E. THIRD COUNTRY, NEITHER NEPALESE NOR INDIAN IN ORIGIN) CAN BE AS MUCH AS 20 PERCENT VERSUS PREVIOUS TEN. THIS HAS INCREASED THE NUMBER OF ELIGIBLE ITEMS FROM 18 TO 68, ALL OF WHICH ARE LISTED IN ANNEX TO PROTOCOL. WHAT THIS WILL MEAN IN TERMS OF ACTUAL INCREASED NEPALESE EXPORTS TO INDIA REMAINS TO BE SEEN,, BUT AT LEAST THERE IS OPPORTUNITY FOR EXPANSION. CONDITIONS GOVERNING PRODUCTS WITH 20-50 PERCENT FOREIGN COMPONENT SOMEWHAT LESS PRECISE THAN THAT DESCRIBED REFTEL. POTENTIAL FOR TARIFF CONCESSIONS OF "AT LEAST...50 PERCENT" IS SPECIFIED, BUT GOI STILL GIVEN RIGHT TO DETERMINE ELIGIBILITY ON CASE BY CASE BASIS. GOI HAD SIMILAR VETO UNDER 1971 AGREEMENT AND EXERCISED IT ACROSS THE BOARD. PRESENT LANGUAGE IS CONFIDENTIAL

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CERTAINLY MORE FORTHCOMING, HOWEVER, AND PRESUMABLY DESCRIPTIONS OF BETTER TERMS FOR THESE GOODS THAT WE RECEIVED FROM GOI OFFICIALS REFLECT THEIR UNDERSTANDING OF REAL CHANGE IN INDIAN POSITION. AGAIN THAT STILL LEAVES QUESTION AS TO HOW MANY NEPALESE GOODS WOULD BE COMPETITIVE IN INDIAN MARKETS UNDER BURDEN OF EVEN 50 PERCENT DUTY. MOST FAVORED NATION TREATMENT FOR GOODS WITH OVER 50 PERCENT FOREIGN COMPONENT IS GRANTED BY TREATY, AS PER REFTEL.

4. ON NEGATIVE SIDE, FROM NEPALESE STANDPOINT, PANDEY POINTED OUT THAT GOI HAD NOT AGREED TO PUT NEPALESE PRODUCED ALCOHOLIC BEVERAGES ON LIST OF DUTY FREE ITEMS DESPITE THEIR MEETING 80 PERCENT CRITERIA. HE STATED THAT LOCAL KHUKRI RUM IN PARTICULAR HAD POTENTIALLY SIGNIFICANT MARKET IN INDIA, INCLUDING AMONG GURKHAS AND OTHER NEPALESE RESIDENTS THERE. PANDEY ALSO NOTED THAT INDIANS HAD SO FAR REFUSED TO ADD TWO ADDITIONAL BORDER CROSSING POINTS IN FAR EAST NEPAL TO AGREED LIST OF ROUTES (SEE MORE BELOW ON LETTERS). IN SHORT, LIST OF BORDER POINTS REMAINS UNCHANGED DESPITE NEPALESE REQUESTS.

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5. IN ANOTHER IMPORTANT AREA, ISSUE OF GUARANTEE OF
AVAILABILITY OF ESSENTIAL GOODS (READ TO NEPAL FROM INDIA)
NEPALESE CAME AWAY WITH SOMEWHAT LESS THAN HALF A LOAF.
TREATY AND PROTOCOL DO PLEDGE BEST EFFORTS TO MEET SUCH
DEMANDS AND ESTABLISH DEFINITE SYSTEM FOR SEEKING AND GRANTING
OF QUOTAS ON ANNUAL BASIS, BOTH PLUSES OVER 1971 TREATY.
HOWEVER, THEY ALSO MAKE IT QUITE CLEAR THAT NEEDS OF SUPPLIER
(I.E. INDIA) COME FIRST.

6. TRANSIT TREATY, PROTOCOL AND MEMORANDUM: AGAIN NEW
TREATY IS VERY SIMILAR IN ARTICLES 8 THRU 13 DEALING WITH
TRANSIT IN 1971 TREATY. THIS INCLUDES RETENTION OF LANGUAGE
(LATTER HALF OF OLD ARTICLE 8, NEW ARTICLE 2(A)) OBJECTED
TO BY NEPALESE WHICH IN EFFECT PUTS "ELGITIMATE INTERESTS"
OF INDIA ABOVE NEPAL'S FREEDOM OF TRANSIT. AGAIN, HOWEVER,
PROTOCOL GIVES NEPAL NUMBER OF PLUSES. IN TERMS OF PORT
FACILITIES IN CALCUTTA, PANDEY CITED NOT ONLY INDIAN
AGREEMENT TO LEASE PIER SPACE, BUT ALSO PROVISION OF GROUND
FLOOR WAREHOUSE SPACE VICE PREVIOUS FIRST FLOOR ONLY.
THIS COUPLED WITH INCREASE IN "FREE TIME"
AT PORT FROM THREE TO SEVEN DAYS SHOULD SUBSTANTIALLY CUT

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DEMURRAGE FEES FOR NEPAL. THERE IS CATCH HOWEVER, NAMELY THE HIGH COSTS TO NEPAL FOR RENTING SUCH ADDITIONAL FACILITIES (SOME 40-50 LAKHS RUPEES ANNUALLY ACCORDING TO PANDEY). THIS HAS GIVEN NEPALESE PAUSE WHICH IS WHY PROTOCOL PROVIDES SIX MONTH OPTION WITHIN WHICH THEY MUST DECIDE WHETHER TO CARRY THROUGH ON LEASE. WHILE PANDEY FOR ONE FEELS INDIAN CHARGES ARE HIGH, HE ALSO NOTES THAT WHEN COMPARED TO MUCH HIGHER FIGURE FOR DEMURRAGE CHARGES (PANDEY CITED FIGURES 6-7 CRORES RUPEES INCURRED IN 1977), ADVANTAGE IS STILL CLEARLY TO NEPAL.

7. AS FOR OTHER ADVANTAGES, AS NOTED REFTEL THERE IS PROVISION THAT NEPAL CAN BE ITS OWN CUSTOMS AGENT--I.E. HANDLE ITS OWN GOODS--AND THAT "CUSTOMS TRANSIT DECLARATION" CAN BE GIVEN DIRECTLY TO IMPORTER (OR AGENT) RATHER THAN BEING MAILED, THUS REDUCING DELAYS AT BORDER POINTS. TWO ADDITIONAL ROUTES FROM CALCUTTA TO NEPAL WERE ALSO ADDED, ONE TO TIKONIA (WHICH WOULD SERVICE KARNALI PROJECT IF THAT GETS GOING) AND SECOND TO JARWA, GIVING DANG DISTRICT ITS FIRST ACCESS POINT.

SIMILARLY, WHERE BULK CARGOES (E.G. FERTILIZER AND CEMENT) WERE PREVIOUSLY LIMITED TO FEWER ROUTES, NEW PROTOCOL ALLOWS ALTERNATES SO LONG AS THERE IS PRIOR NOTIFICATION. THIS IS IMPORTANT TO NEPAL PARTICULARLY IN FAR WESTERN REGION WHERE INTERNAL TRANSPOR IS DIFFICULT IF NOT IMPOSSIBLE.

8. AGAIN, HOWEVER, TRANSIT CHANGES WERE NOT ALL ONE SIDED. UNDER NEW MEMORANDUM, GOODS TRAVELING BY BOTH RAIL AND TRUCK MUST BE INSURED AGAINST NON-ARRIVAL AT BORDER, WHEREAS PREVIOUSLY THIS REQUIREMENT APPLIED ONLY TO GOODS TRAVELING BY TRUCK. THERE IS PROVISION FOR EXEMPTION FROM THIS REQUIREMENT FOR NEPALESE GOVERNMENT GOODS AND A LESSER INSURANCE REQUIREMENT FOR GOODS TRUCKED BY NEPALESE GOVERNMENT TRUCKING FIRM. BUT EVEN WITH THESE QUALIFICATIONS, GOI HAS CLEARLY TIGHTENED CONTROL OVER GOODS IN TRANSIT AT EXPENSE

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PARTICULARLY OF NEPALESE PRIVATE IMPORTERS. PROVISION, THOROUGHLY DISLIKED BY NEPALESE, ALLOWING INDIAN INSPECTION AT ANY TIME DURING TRANSIT IF PILFERAGE SUSPECTED, RETAINED. ALSO RETAINED WAS PROVISION THAT ENTIRE TRANSIT PROCESS FOR IMPORTS MUST BE COMPLETED WITHIN ONE MONTH OR FEE WILL BE LEVIED. PANDEY STATES GON SOUGHT TO HAVE THIS TIME LIMIT REMOVED OR LENGTHENED, BUT FAILED. FINALLY, 1971 TREATY PROVIDED EXEMPTION FROM CUSTOMS EXAMINATION IN CALCUTTA FOR GOODS IMPORTED BY ROYAL FAMILY; THIS PROVISION NO LONGER INCLUDED. THERE MAY BE INNOCENT EXPLANATION FOR LAST CHANGE, WHICH EMBOFF DID NOT DISCUSS WITH PANDEY.

9. AGREEMENT TO CONTROL UNAUTHORIZED TRADE: WHILE THIS IS OF COURSE NEW DOCUMENT, IT TOO INCORPORATES SOME OF OLD

LANGUAGE FROM 1971 INCLUDING IN PARTICULAR FORMER ARTICLE 14
(NOW ARTICLE III) DEALING WITH RE-EXPORTS TO AND FROM THIRD
COUNTRIES WHICH NEPALESE HAVE ALWAYS FOUND OFFENSIVE.
MOREOVER, NEW LANGUAGE TENDS TO BE LARGEMLY IN INDIA'S FAVOR.

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R 240530Z MAR 78
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IT IS TRUE, AS FOREIGN SECRETARY TOLD DCM (REFTEL) THAT NEPAL
MADE NO SPECIFIC CONCESSIONS RE ITS TRADING POLICY AND THERE
IS SPECIFIC RECOGNITION OF RIGHT TO PURSUE INDEPENDENT FOREIGN
TRADE POLICIES. BUT THERE IS ALSO COMMITMENT AS PANDEY TOLD
EMBOFF (AGAIN REFTEL) "TO TAKE ALL NECESSARY MEASURES" TO
INSURE ECONOMIC INTERESTS OF OTHER PARTY ARE NOT ADVERSELY
AFFECTED THROUGH UNAUTHORIZED TRADE. WHILE THIS IS TWO WAY
OBLIGATION, GOI HAS ALREADY CITED IT AS MAIN PROVISION TO
DEAL WITH ITS MAIN CONCERN--I.E. ILLICIT TRADE. MOREOVER
THERE IS PROVISION FOR CONSULTATIONS EVERY TWO MONTHS,
GIVING GOI FORMAL AVENUE TO RAISE SUCH ISSUES.

10. FOUR LETTERS: MOST IMPORTANT DEALS WITH TRADE "WITH AND
THROUGH" BANGLADESH. TRANSIT POINT OF RADHIKAPUR (ON INDIAN/
BANGLADESH BORDER) RECOGNIZED BY GOI WITH AGREEMENT TO COME
INTO FORCE WHEN INDIA HAS WORKED OUT TRANSIT PROCEDURES WITH
BANGLADESH. PANDEY STATES GOI GAVE COMMITMENT TO ACHIEVE
THIS WITHIN TWO MONTHS. SECOND LETTER DEALS WITH TWO TRANSIT
POINTS IN EASTERN NEPAL (KAKARBHITTA/NAXALBARI AND PASHUPATIN-
AGAR/SUKHIAPOKHARI) MENTIONED IN PARA 4 ABOVE, WHICH GOI HAS
AGREED MAY CONTINUE IN OPERATION PENDING ITS COMPLETION OF

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STUDY OF NEPAL'S REQUEST TO INCLUDE THEM IN TREATY. PANDEY SAYS KAKARBHITTA/NAXALBARI WAS ACTUALLY ON LIST OF EARLIER DRAFT UNTIL GOI REALIZED THIS PROVIDED ACCESS TO AND FROM BANGLADESH OVER ONLY 60 KILOMETERS OF PAVED HIGHWAY. FOR GON GETTING IT BACK ON LIST IS IMPORTANT POINT FOR JUST THAT REASON. PASHUPATINAGAR/SUKHIAPOKHARI IS TRANSIT POINT FOR NEPALESE TRADE WITH SIKKIM. IT IS DESIRABLE BUT LESS IMPORTANT FROM GON STANDPOINT, AND IT IS SENSITIVE FOR GOI. PANDEY STATES DECISION ON THESE TWO CROSSING POINTS HAS BEEN PROMISED BY GOI AT TIME OF PRIME MINISTER'S FORTHCOMING VISIT TO DELHI. OTHER TWO LETTERS DEAL WITH (A) ON-GOING CONSULTATIONS AS NECESSARY AT OFFICIAL LEVEL AND EVERY SIX MONTHS VIA SENIOR LEVEL COMMITTEE; AND (B) WITH MINOR ISSUE OF TRANSIT THROUGH INDIA OF PERSONS TRAVELING BETWEEN TWO LOCALITIES IN NEPAL.

11. COMMENT: UNDOUBTEDLY INDIAN AUTHORITIES HAVE THEIR OWN PERSPECTIVE ON THIS TRADE AND TRANSIT PACKAGE, INCLUDING POINTS WHICH WE MAY HAVE OVERLOOKED AND GON CHOOSES NOT TO DISCUSS. AND EVEN INVOLVED NEPALESE, SUCH AS PANDEY, ACKNOWLEDGE DEFINITE CONCESSIONS TO INDIA AND AREAS WHERE LATTER WOULD NOT BUDGE. NEVERTHELESS, THERE ARE NUMBER OF GAINS FOR NEPAL WHICH MINISTER OF COMMERCE AND INDUSTRY KHATI WAS ABLE TO DETAIL ON HIS RETURN MARCH 20 FROM SIGNING CEREMONY. GON HAS CLEARLY BEEN SELECTIVE IN POINTS WHICH IT HAS HIGHLIGHTED, BUT TAKEN AS WHOLE, NEW PACKAGE STRIKES US AS POLITICALLY QUITE DEFENSIBLE. NEXT KEY STEP IS PRACTICAL IMPLEMENTATION, PARTICULARLY AT WORKING LEVEL WHERE DESIRE FOR ACCOMMODATION MAY BE LESS. IN THEORY, PERIODIC REVIEWS, INCLUDING NEW PROVISION FOR MEETINGS EVERY SIX MONTHS AT SENIOR LEVEL, SHOULD PROVIDE MECHANISM TO IRON OUT PROBLEMS. BUT THIS IN TURN STILL DEPENDS ON CONTINUATION OF SPIRIT OF ACCOMMODATION WHICH PRODUCED TREATIES THEMSELVES.

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